IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No 1180 of 1998
For Approval and Signature:
Hon'ble MR.JUSTICE P.B.MAJMUDAR

1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MM KHANDOL Versus STATE OF GUJARAT

Appearance: MR IS SUPEHIA for the Petitioner.
Ms.Harsha Devani, Assistant GOVERNMENT PLEADER,
for Respondent No. 1.
MR YS MANKAD for Respondent No. 2

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/01/2002

ORAL JUDGEMENT

The petitioner was appointed as a Clerk-cum-Typist in the year 1958 by the Collector of Kutch in its Jagir Branch, which comes under the administration of the Local Department of the State. By way of superannuation, the petitioner had retired on 30th September, 1994. The grievance of the petitioner in the petition is that at the time of retirement, he was paid gratuity at the rate which is payable to the other Government servants and not as per the Resolution of the Department of the year 1972. It is submitted by the petitioner that he has been paid gratuity amount at the rate payable to the Government servants, but, as such, he was required to be paid gratuity as per the Resolution of the Department of 1972. Reliance is placed on the Resolution of 1972. The aforesaid Resolution, at the relevant time, was governing the service conditions of employees serving under the Jagir Department. Paragraphs 30 and 32 of the said Resolution deal with the payment of gratuity. So far as paragraph 32 is concerned, it deals with the payment of gratuity on the basis of calculating

the average pay of an employee. According to the petitioner, he was entitled to receive gratuity on the basis of the said Resolution. It is submitted that the gratuity has been paid to the petitioner on the basis of the Resolution of the Government dated 15.9.1990, which, according to him, is illegal and arbitrary. By the aforesaid Resolution, it has been resolved to give gratuity to the employees serving under the Devasthan Trust or under the Jagir, which are under the administration of the Government at par with the other Government servants. Mr.Supehia for the petitioner argued that this 1990 Resolution is not applicable in the case of the petitioner because the earlier 1972 Resolution is not amended by the aforesaid Resolution and that, in any case, it cannot retrospectively apply in the case of the petitioner, because while he joined the service, his Service Conditions were governed by the 1972 Resolution. In the alternative, it was submitted that, in case it is found that the petitioner is governed by the aforesaid Resolution of 1990, then the petitioner should be given the benefit of pension, as, other government employees are entitled to the same and no such pension is given to the employees serving under the Jagir Department.

The petition has been resisted on behalf of the Department. The Affidavit-in-reply has been filed by one J.R. Damor, Under Secretary, Legal Department. In paragraph 4 of the said reply, it is stated as under :-

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> 4. Before dealing with the contentions, the deponent crave leave to submit the following facts :
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> (1) That neither the petitioner has been appointed to a Civil post nor is a government servant entitled for the benefits admissible to the Govt. servants.
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> (2) That petitioner has been appointed to a post attached with the Jagir Branch of Collectorate, Bhuj, which is under control of the Collector of the Kutch District as an administrative of Jagirs, but the employees are not the Government Servants. The Jagir Branch is looking after the affairs of 38 Jagirs of Kutchchh.
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> (3) That various representations have been made with the State Government to make certain provisions regulating the terms and

conditions of the persons and staff (not being Government Employee) attached with the Jagir Branch to which the petitioner belongs and attached.

(4) The Government had framed the norms wherein the persons attached to the Jagir Branch were originally not extended Gratuity (as per Government norms and other benefits like medical allowance, cash allowance, group insurance, encashment of leave on superannuation, bonus, HBA, interim relief, higher grade pay etc., as per the original service conditions framed and applicable to the petitioner. It is submitted that all the benefits admissible and extended to the employees of Jagir Branch are debited to the Administration of funds/Jagirs Branch created from contributions collected from Jagirs of the District. It is submitted that the benefits are subject to the Administration funds available provisions of the Administration fund. It is submitted that the original service conditions are governed under the G.R. dated 18.8.72 (copy enclosed) and subsequently, amended and deemed to have been amended and revised by the different Government orders by which uniform pattern is accepted for according such financial benefits to the employees of Jagir Branch & some Trusts like Ambaji, Bechraji, etc., managed under norms framed by the Government.

At the outset, it is submitted that the norms were framed for extending the Gratuity to all such employees at same rate as that of the Government employees and the petitioner accepted all the norms extended and agreed upon and accepted all other benefits which he was not entitled to them according to the original Rules and terms and conditions governing the service conditions of employees of Jagir Branch. After having accepted and pocketed all the benefits, now the petitioner cannot be permitted to approbate and reprobate, and cannot be permitted to claim that he would like to be governed by special treatment in one case and general treatment in other

> cases. It is submitted that the administration cannot make discrimination between the petitioner and other similarly situated employees in other Devasthan Trust like Ambaji, Dwaradish and Bechraji Temple Trusts and, therefore, the contentions and claims of the petitioner are misconceived in law and facts and deponent denies the same.
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> ... ..."

Accordingly, it is clearly stated in the aforesaid paragraph 4 that the norms were framed for extending the gratuity to all such employees at same rate as that of the Government employees and the petitioner accepted all other benefits which he was not entitled according to the original Rules of 1972. It is required to be noted that detailed service Rules were framed for employees serving under the Jagir Branch by Resolution dated 18.8.1972, which prescribes the date of superannuation, payment of gratuity and all other benefits. Clause 35 of the said Rules clearly provides that the employees serving in the Jagir Branch will not be entitled to claim pension and their services are not to be treated as pensionable service.

On behalf of the Additional Collector, one Y.C. Potdar, has also filed his reply at page 43. In paragraph 2 of the said reply, it has been clearly stated that the Jagir employees were paid gratuity as per Rule 31 of the Rules framed by the G.R. dated 18.8.1972 and the gratuity was paid at the rate of average salary for the last 36 months. Thereafter, those Rules were amended by the G.R.No.S.V.T.-2288-5-2510-E dated 15.9.1990, by which the Rules as regards the gratuity payable to employees of the Devasthans under the management of the State were changed and that the full time employees of the Devasthans were paid at the rate at which it was paid to the other Government servants. It is averred in the said reply that the petitioner has asked for gratuity on the basis of 1972 Rules, but he is not entitled to the same as he has retired in the year 1994 and at that time, whatever amount was required to be paid as per the Rules of 1990 towards gratuity was paid to him. It is also stated that the petitioner was paid 20% Dearness Allowance as per the Finance Department Resolution dated 18.10.1994. It is also stated that, accordingly, the other employees, similarly situated like the petitioner, were also paid gratuity on the same lines the petitioner was given the said amount. It is also specifically

stated that so far as Rule 31 is concerned, the same is cancelled and the same is substituted by amended G.R. dated 15.9.1990. Along with the said reply, Government Resolution dated 9.6.1997 is also annexed, wherein it is stated that with a view to seeing that there is no duplicity or confusion of Rules, it was resolved that the earlier conditions of Rules of some of the employees of Jagir Branch and of Devasthan employees issued under G.R. dated 18.8.1972 are to be treated as amended.

Mr.Supehia, taking clue from the aforesaid G.R., argued that, actually, the Rules of 1972 were amended in 1997 and not in 1990.

After considering the arguments of both the sides and considering the pleadings on record, I am of the opinion that there is no substance in the petition. It is not in dispute that so far as Rules of 1972 as regards payment of gratuity are concerned, the same are amended in the year 1990, i.e. prior to the retirement of the petitioner, and as per the G.R. of 1990, the petitioner had been already paid gratuity, which he has already accepted at the time of his retirement. Not only that, the petitioner has also taken advantage of other benefits, as stated by the Department in the affidavit-in-reply, at that stage. So far as the Resolution of 1997 is concerned, by the same, Rules, which were not amended previously, were amended totally. But, so far as gratuity part is concerned, the same was already amended in 1990 and on that basis, the petitioner was already paid his gratuity and he has accepted the same without making any grievance. The petitioner has also accepted other benefits as per the Government Resolutions. Therefore, now, it is not open for the petitioner to make grievance that even though Gratuity Rules of 1972 were amended, he should still be paid gratuity as per the said Rules of 1972, and not as per the amended Rules of 1990. I, therefore, do not find any substance in the said argument of Mr.Supehia.

So far as the further amendment of 1997 is concerned, the same is with regard to the rest of the Rules of 1972. However, so far as gratuity part is concerned, the same was amended as back as in the year 1990. It cannot be said that even the Rules with regard to amendment of gratuity also came into force for the first time in 1997. At the cost of repetition, it is stated that there was already an amendment in 1990 so far as the payment of gratuity is concerned by making amendment in the 1972 Rules for the limited purpose of gratuity and rest of the things were amended in 1997.

The argument of Mr.Supehia, therefore, cannot be accepted.

So far as the contention about non-payment of pension is concerned, even as per the earlier Rule of 1972, it is clearly provided that the services of the employees under the Jagir Branch are not pensionable. The petitioner has already accepted provident fund at the time of his retirement. Since from the inception, the pension scheme is not applicable to the employees of the Jagir Branch, it is not open for the petitioner to make grievance in this behalf.

It was lastly submitted by Mr.Supehia that at the time when the petitioner was appointed, the Rules of 1972 were applicable and that, therefore, the same cannot be amended retrospectively in 1990. He also submitted that the Government is estopped from denying the benefit to the petitioner, which he was entitled at the time of his appointment. In this behalf, it is required to be noted that, firstly, there is no such averment in the petition and, naturally, there is no reply. But, apart from the said fact, no estoppel can be pleaded against the Government in so far as passing Resolution in accordance with law is concerned. The petitioner has already taken advantage of other Government Resolutions, as stated in the affidavit-in-reply by the Department. Estoppel against law can never be pleaded. In any case, it is not in dispute that the petitioner has already retired as back as in the year 1994 and prior to that, he has already taken benefit of the Resolution of 1990. The petitioner has already taken the benefit of gratuity which was paid to him at the relevant time at the time of his retirement and the same is accepted as back as in the year 1994. Now, it is not open for the petitioner to make grievance after a considerable time as the petition has been filed as late as in 1998. Accordingly, I do not find any substance in the said argument and accordingly, the said argument is also rejected.

In view of what is stated above, I do not find any substance in this petition and the petition is accordingly dismissed. Rule is discharged with no order as to costs.

(P.B. Majmudar, J.)

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(apj)